



Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D.C. 20554

02-278

CGB

SEP 15 2003

Control No. 0302591/aw

The Honorable Peter J. Visclosky
U.S. House of Representatives
2313 Rayburn House Office Building
Washington, D.C. 20515

RECEIVED

SEP 29 2003

Federal Communications Commission
Office of Consumer Protection

Dear Congressman Visclosky:

Thank you for your letter on behalf of your constituent, Ms. Nancy Smith, regarding the Federal Communications Commission's (Commission) recent amendment to the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). Specifically, Ms. Smith expresses concern that, "without the proper input from the business and association community," the Commission reversed its prior conclusion that an "established business relationship" constitutes the necessary express permission to send an unsolicited facsimile advertisement. Ms. Smith indicates that requiring such express permission to be in writing will place onerous burdens on associations that wish to fax their members.

On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02-278, seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. The NPRM sought comment on the option to establish a national do-not-call list, and how such action might be taken in conjunction with the national do-not-call registry rules adopted by the Federal Trade Commission (FTC) and the numerous state do-not-call lists. In addition, the Commission sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's Report and Order released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.


No. of Comments Received 2
List / Attachments

As we explained in the Report and Order, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules were initially scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July Report and Order, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the Report and Order indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. Enclosed is a copy of the Commission's Order on Reconsideration, released on August 18, 2003.

We appreciate Ms. Smith's comments. We have placed a copy of Ms. Smith's correspondence in the public record for this proceeding. Please do not hesitate to contact us if you have further questions.

Sincerely,


For K. Dane Snowden

Chief

Consumer & Governmental Affairs Bureau

Enclosures

PETER J. VISCLOSKY
1ST DISTRICT INDIANA
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEES
DEFENSE
ENERGY AND WATER DEVELOPMENT
CONGRESSIONAL STEEL CAUCUS
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August 25, 2003

Mr. Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street SW, # 8-B201
Washington, D.C. 20554

CCB
Policy-TCPA
2591

Dear Chairman Powell:

I write on behalf of Ms. Nancy Smith, a resident of Indiana's First Congressional District.

Ms. Smith has contacted me to express her opposition to proposed rule changes which would limit the ability of business to send facsimiles to customers. Enclosed, please find a copy of the correspondence I have received from Ms. Smith. I would appreciate your addressing her concerns that the proposed changes would prevent business from relaying important information to consumers.

Thank you in advance for your serious consideration of this matter. Do not hesitate to let me know if you have any questions or need additional information.

Sincerely,

Peter J. Visclosky
Member of Congress

PJV:klb
Enclosure

3 SEP 2003 RCVD

Barnes, Dan

From: PJV
Sent: Thursday, August 07, 2003 8 02 PM
To: Barnes, Dan
Subject: FW WriteRep Responses

>-----
>From: writerep
>Sent: Thursday, August 07, 2003 8:01:44 PM
>To: PJV
>Subject: WriteRep Responses
>Auto forwarded by a Rule
>

DATE: August 7, 2003 7:43 PM
NAME: Nancy Smith
ADDR1 9211 Mallard Lane
ADDR2:
ADDR3
CITY St. John
STATE. Indiana
ZIP: 46373
PHONE.
EMAIL. smith@gniar.com
msg:
Nancy Smith
Executive Vice President
Greater Northwest Indiana Association of REALTORS
9211 Mallard Lane
St John, IN 46373-9017

August 7, 2003

The Honorable Peter J Visclosky
U.S. House of Representatives
2313 Rayburn House Office Building
Washington, D.C 20515-1401

Representative Visclosky

I am writing to alert you to the recent actions taken by the FCC to amend the regulations that implement the Telephone Consumer Protection Act of 1991 (TCPA). The FCC has decided, without the proper input from the business and association community, to modify the current law by doing away with the "established business relationship" provision pertaining to fax advertisements. This amendment will place onerous administrative and economic burdens on associations by requiring "expressed written consent" from their own members prior to sending a fax advertisement. I hope you share in my concern over this onerous restriction of legitimate commercial activity.

The new FCC reading of the TCPA prohibits any person or entity from sending any fax that contains an unsolicited advertisement which is defined as "any material advertising the commercial availability or quality of any property, good, or services which is transmitted to any person without that person's prior express invitation or permission." As a result, the established business relationship is no longer sufficient to permit faxes to be transmitted. Associations and businesses are now faced with the challenging administrative, legal, economic and record keeping ramifications that will arise thanks to the new FCC changes.

The proposed changes, which are scheduled to go into effect on August 25, 2003 - 30 days after they were published in the Federal Register on July 25, 2003, will create a significant economic and labor-intensive burden for the association community. The adjustment in the TCPA will require signed written consent to allow faxes to be sent that contain unsolicited advertisements. It would even require written consent for faxes pertaining to events such as annual meetings

While these changes may be suitable for residential telephone numbers as the new Do Not Call registry provides, they are certainly not acceptable for association-to-member facsimile communications. Associations rely on faxes as a prime source of communication and marketing to meet the needs of their members

With penalties reaching \$11,000 per unauthorized fax, this is a burden that few associations can financially endure. The proposed FCC changes are a prime example of an idea where the disadvantages and unintended consequences far outweigh the benefits. Please join me in requesting that the FCC halt their efforts to change the current TCPA.

Sincerely,

Nancy A. Smith
Executive Vice President
Greater Northwest Indiana Association of REALTORS